

1 I didn't ask him that.

2 Q. And you're not aware of any information  
3 establishing he knows any of the "Domino" writers;  
4 correct?

5 A. Let's see. I think -- you know, when I talked  
6 to him on phone, I think he said that he -- he had not  
7 given it to the writers of "Domino." I don't know if he  
8 knows them or not.

9 Q. Do you have any reason to believe that  
10 Sylvia Rhone ever played or provided a copy of "Bright  
11 Red Chords" to any of the "Domino" writers?

12 A. The only thing with Sylvia Rhone is that Sunny  
13 Elle Lee references her in that article I provided you.  
14 And Sunny Elle Lee definitely has a copy of "Bright Red  
15 Chords" and loves the song. So if Sunny Elle Lee showed  
16 it to her boss, the president of Universal Motown,  
17 Sylvia Rhone, then -- then that's possible.

18 I understand Sunny Elle Lee got promoted to  
19 manager of A&R at Universal Motown in June of 2011, I  
20 believe, which was before the release of "Domino." So  
21 it's possible that Sunny Elle Lee, having "Bright Red  
22 Chords," might have shown it to Sylvia Rhone. But other  
23 than that, I don't have a connection to Sylvia that I  
24 know of. Sylvia Rhone, that is.

25 MR. PEASE: When we reach an hour and a half or

1 Red Chords" live. So, yeah, I hope that helps.

2 Bonnie McKee has been working with Sean Walsh since  
3 about 2009, according to Sean Walsh.

4 Q. Bonnie McKee is not one of the credited writers  
5 of "Domino"; correct?

6 A. Right. But in that time span, she has worked  
7 with several of the writers of "Domino." Let's just go  
8 over -- she's worked with Emily Wright, vocal producer  
9 and engineer of "Domino," at least once in that time;  
10 Claude Kelly, writer of "Domino," once in that time;  
11 Cirkut, nine times; Max Martin, 14 times; Dr. Luke, 17  
12 times; Katy Perry, six times.

13 I mean, you guys know this stuff because you --  
14 you know, you're Universal. But this is what I've been  
15 able to gather from not just the Internet, but from CDs.  
16 You know, CDs like Teenage Dream. Liner notes. Liner  
17 notes of "Domino." Liner notes of Teenage Dream.

18 In fact, the Katy Perry movie "Part of Me," the  
19 sound was done at Pulse. Two of the writers of  
20 "Domino," Max Martin and Dr. Luke, are coproducers of  
21 "Part of Me." My guitar player, Casey Hooper, that  
22 played "Bright Red Chords" around 56 shows in 11 states  
23 at least is a writer on "Part of Me." He wrote two  
24 songs.

25 Q. Mr. Loomis, you've been testifying to things

Page 456

1 representative other than his LinkedIn page, which you  
2 did testify about?

3 A. His business card that he gave me.

4 Q. Do you still have his business card?

5 A. No.

6 Q. When did you last speak to Josh Feldman?

7 A. I want to say March 4th, 2009. He said he  
8 would check back in a year, and they did check back in  
9 in about a year. But it wasn't Josh. It was Sunny Elle  
10 Lee. [REDACTED]

11 Q. Did you -- are you aware of any evidence that  
12 Mr. Feldman ever received a copy of "Bright Red Chords"?

13 A. Am I aware of it? Yeah. I think I -- in those  
14 e-mails I gave you -- I'm still waiting on those e-mails  
15 from Sarah, but I'm pretty sure that he was -- he was  
16 sent a copy of "Bright Red Chords" and handed a copy  
17 after the show.

18 Q. But you did not personally witness anyone hand  
19 him a copy of the CD; correct?

20 A. I did. I did. I did witness it.

21 MR. MOVIT: Could you please -- could the court  
22 reporter please read back --

23 THE WITNESS: I thought you were talking  
24 about --

25 MR. MOVIT: -- not Mr. Loomis's answer to my

# ***Exhibit D – Part 2***

Page 1

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

4 WILL LOOMIS, an individual, )  
5 Plaintiff, )  
6 vs. ) No. CIV12-5525  
7 JESSICA CORNISH, P/K/A JESSIE J, )  
8 an individual; UNIVERSAL MUSIC )  
9 GROUP, INC., a Delaware )  
Corporation; LAVA RECORDS, LLC, A)  
limited liability company; )  
UNIVERSAL REPUBLIC RECORDS, )  
10 Business form unknown; DOES 1-10,)  
inclusive, )  
11 )  
Defendants. )  
12 )

VIDEOTAPED DEPOSITION OF DAVID STERN, Ph.D.  
LOS ANGELES, CALIFORNIA  
FRIDAY, SEPTEMBER 13, 2013

23 REPORTED BY:  
24 LESLIE L. WHITE, CSR NO. 4148  
25 JOB NO.: 65877

1 Edgar B. Pease III, Esq. SBN 159919  
2 The Law Offices of Edgar B. Pease III  
3 16255 Ventura Blvd., Ste. 704  
4 Encino, CA 91436-2311  
5 Email: [edgarpease@gmail.com](mailto:edgarpease@gmail.com)  
Tel: (818) 981-2200  
Facsimile: (818) 981-2201

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SEP 10 2013

MITCHELL SILBERBERG & KNAPP LLP

6 Attorneys for Plaintiff, Will Loomis  
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WILL LOOMIS, an individual,

Case No. CV12-5525 RSWL  
(JEMx)

Plaintiff,

v.

JESSICA CORNISH, P/K/A JESSIE J, an individual; UNIVERSAL MUSIC GROUP, INC., a Delaware corporation; LAVA RECORDS LLC, a limited liability company; UNIVERSAL REPUBLIC RECORDS, business form unknown; and DOES 1-10 INCLUSIVE,

PLAINTIFF, WILL LOOMIS'  
EXPERT WITNESS  
DESIGNATION FRCP 26 (2), ET  
SEC. OF MUSICOLOGIST DR.  
DAVID STERN; WRITTEN  
REPORT OF EXPERT, DR.  
DAVID STERN PURSUANT TO  
FRCP 26(2)(B) CERTIFICATION

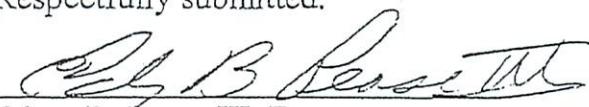
Defendants.

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

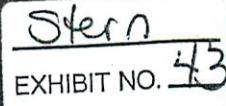
PLEASE TAKE NOTICE that Plaintiff, WILL LOOMIS, does hereby designate Dr. David Stern as Plaintiff's musicologist expert in the above-referenced case.

Dated: September 9, 2013

Respectfully submitted,

  
Edgar B. Pease III, Esq.

DESIGNATION OF EXPERT PURSUANT TO FRCP RULE 26 (2)(B)

  
EXHIBIT NO. 43  
L. White

CERTIFICATION AND DECLARATION OF DR. DAVID STERN

I, DR. DAVID STERN, hereby Certify and Declare as follows:

1. I am not a Party in this matter. This declaration is true

and correct; the facts contained herein are within the scope of my expert knowledge, and, if sworn as a witness, I would and could competently testify thereto.

2. I have been retained to provide expert testimony as a musicologist in the copyright infringement case styled as Will Loomis v. Jessica Cornish P/K/A Jessie J, Universal Music Group, Inc. et. al., Case No. CV 12-5525 RSWL (JEMx).

3. All of the analytical work provided in this report was done by me alone, and my conclusions and opinions were formed from my analytical work done for this report and from my own musical expertise.

4. I have prepared and signed this Declaration and accompanying Report myself.

5. Attached hereto as Exhibit "A" through "I" is a complete statement of all opinions I will express and the basis and reasons for them.

6. The facts and data I have considered in forming my opinions include the musical composition "Bright Red Chords" written by Will Loomis and recorded by his band, Loomis and the Lust, and registered with the United States Copyright Office with registration No. Pau 003479101 (Utube/Online); the released and distributed version of the song "Bright Red Chords" as included on the Loomis and the Lust's CD entitled Nagasha and the EP release of the same song (MPS - iTunes); and

1 the Jessie J video of the song "Domino" and its CD release on Jessie J,  
2 the remix (Utube/Online).

3 7. I used the music notation program Sibelius 7 to prepare the  
4 music notation presented in my Report.

5 8. Attached hereto are true and correct copies of the following  
6 exhibits attached to my Report:

7 a. EXHIBIT "A": Curriculum Vitae and biography expressing  
8 expert qualifications of Dr. David Stern Ph.D.

9 b. EXHIBIT "B": Summary on the Musical Aspects of this  
10 Report Concerning "Bright Red Chords" and "Domino" by Dr. David Stern  
11 Ph.D. in music theory; Summary Conclusions;

12 c. EXHIBIT "C": Detailed assessment of the Musical  
13 Correspondence between "Bright Red Chords" and "Domino" by Dr. David  
14 Stern Ph.D. in music theory; The Copyright Version of Bright Red Chords  
15 and the final Final Video Version of Bright Red Chords; Correspondence Of  
16 Ideas in the Verses of Both Songs: Melodic Figure "A"; Melodic  
17 Correspondence of Ideas in the Verses of Both Songs; role of phrase "B";  
18 Melodic Correspondence of Ideas in the Verses of Both Songs; Summation;  
19 Conclusion on the Use of Figures A and B in Domino;

20 d. Example 1: Bright Red Chords – (Copyright Demo Recording  
21 and Final Video Versions) – Domino Comparison (given in D major);

22 e. Example 2: Bright Red Chords (Demo and Final Versions  
23 and Domino – Comparative Uses of Melodic Figures A and B;

24 f. Bright Red Chords – Domino, Comparison of Drums at  
25 Starts of verses by Dr. David Stern, Ph.D. in music theory;

g. Comparison of Drum Usage at start of verses in Bright Red Chords and Domino (given in D major);

h. Comparison of the verse melodies to “Bright Red Chords”, “Domino”, and “Rush”; Differences Between the First Verse Melodies of “Rush” and “Bright Red Chords”; Analytical Conclusion of the First Verse Melodies of “Rush”, “Bright Red Chords” and “Domino”;

- i. First Verse Comparison of Bright Red Chords, Domino, and Rush. (all songs given in D major for ease of comparison).

9. I have previously been retained as an expert/consultant in Straughter v. Usher. I have been retained as a consultant /expert regarding question of substantial similarity and music composition hired by attorney Adam Aparicio.

10. I have been paid in this case a total of \$4,305.00 to date for the preparation of my expert opinion. I charge \$350 per hour for court testimony: \$325 per hour for deposition, preparation, and study: I require a minimum \$1,500 retainer for any portion of a half day appearance at a deposition paid five days in advance of the deposition or as otherwise agreed.

11. My address and contact numbers are: Dr. David Stern, 8803 Mayne Street, Bellflower, CA 90706. Telephone (626) 456-3741, email: [davidmuse@aol.com](mailto:davidmuse@aol.com).

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1       12. I have agreed to be prepared and testify at deposition or trial or  
2 as needed in this litigation.

3  
4       I hereby Certify and Declare under penalty of perjury under the laws  
5 of the United States that this expert report attached hereto and the  
6 exhibits attached thereto are true and correct. Executed this 9<sup>th</sup> day of  
7 September, 2013, at Bellflower, California.

8  
9       Dated: September 9, 2013

Dr. David Stern, Ph.D.  
Dr. David Stern, Ph.D.

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# ***Exhibits***

## EXHIBIT “A”

EXHIBIT A

Dr. David Stern  
8803 Mayne St.  
Bellflower, CA 90706  
626-456-3741  
[davidmuse@aol.com](mailto:davidmuse@aol.com)

---

Professional Experience: Teaching Courses in Music Theory (Rudiments, Harmony, Counterpoint, Analysis, Form, Aural Skills), Composition, Songwriting, Humanities and Music History. Composing on commission, Arranging, Orchestration, Music Preparation (score and part preparation, proofreading).

Degrees: Ph.D. in Music Theory, Graduate Center, CUNY, 1991  
M.A. in Music Theory, Queens College, CUNY, 1983  
B. Mus., Mannes College of Music, NY, 1979

Professional Experience:

Freelance musician, composer 2011-13, music score and part preparation for string arrangements for The X Factor TV show (2011-12) and America's Got Talent (2012-13)  
Orchestral score and part preparation for Disney (Europe)  
Freelance composition for film and website music  
Freelance work for M3 (educational publishing company) 2010  
2009-2010 Produced Journey Home CD, with my songs in popular styles  
Faculty, California College of Music, freelance musician 2009  
Part Time Faculty, California State University, 2007  
Lecturer, Pomona College, Writing pop songs for Hilltop Records 2007  
Lecturer, Scripps College 2006  
Assistant Professor of Theory and Composition, Ball State University, 2001-6  
Lecturer, University of North Texas, 2000-2001  
Freelance Music Copying, Arranging, Orchestration and Composition, 1997-2000  
Lead sheet copying of pop songs for Hilltop Records  
Adjunct Faculty, Union Institute, Los Angeles, 1993-2000  
Techniques of Music Faculty, Mannes College of Music, 1986-91  
Assistant and Music Librarian for Miss Peggy Lee, 1994-95  
Adjunct Lecturer, Queens College, 1982-83, and 1985

Honors and Awards:

Barry S. Brook Award for Best Dissertation in Music, 1991  
Pi Kappa Lambda, Music Honor Society, 1981  
English Award, Mannes College of Music, 1976

Dr. David Stern's CV

Publications

"Thomas Morley and the Renaissance Teaching of Modal Composition"  
*Theoria*, vol. 17 2010, 59-112.

"Sibelius's influence on Ralph Vaughan Williams's *Fifth Symphony*", *Sibelius in the Old and New World*, ed. Timothy Jackson, Veijo Murtomäki, Colin Davis, and Timo Virtanen (Frankfurt: Peter Lang, 2010) pp. 383-400.

"Mozart's *Adagio in B minor*, KV 540," *Journal of Schenkerian Studies*, vol. 1, 2005, 149-68.

"William Byrd's Mass for Five Voices", in *Models for Musical Analysis*, ed. Mark Everist (Blackwell, 1992), pp. 208-224.

"Hidden Uses of Chorale Melodies in Bach's Cantatas," in *Trends in Schenkerian Analysis*, ed. Allen Cadwallader (Schirmer, 1990), pp. 115-132.

"Schenkerian Theory and the Analysis of Renaissance Music", in *Schenker Studies*, ed. Hedi Seigel (Cambridge Univ. Press, 1990), pp. 45-59.

"A Quotation from Josquin in Schenker's Free Composition", in *Theory and Practice*, vol. 7, #2, Dec. 1983, pp. 33-40.

"Tonal Organization in Modal Polyphony," in *Theory and Practice*, vol. 6, #2, Dec. 1981, pp. 5-39.

Dissertation: "The Use of Accidental Inflections and the Musical System in Josquin's Period, ca. 1480-1520." City University of New York, 1991.

Compositions on Commission:

*The Lord Is My Shepherd*, setting of Psalm 23, for bass and string quartet, commissioned by Alf Martin.

*The Lord Is My Shepherd*, setting of Psalm 23, for soprano, violin, cello and piano, commissioned for the Cameo Trio and Bettina Zaneteas. 2002.

*He is Risen* (recomposition/choral arrangement of earlier song) 2001, commissioned by the First Presbyterian Church, Muncie in honor of Kirby Koriath.

Dr. David Stern's CV

*Past Echoes and Prayer for Healing*, for trumpet, violin, cello, and piano (with optional wordless voice), commissioned by *The Center for Jewish Culture and Creativity*. 2000

*Sacred Service no. 2*, music for Jewish Sabbath service, commissioned by Temple Beth El, Chappaqua, NY.

*Sacred Service no. 1*, music for Jewish Sabbath service, commissioned by Temple Beth El, Chappaqua, NY, 1990.

Other works (selected, partial list)

*Symphony No. 2* (in homage to Emerson, Thoreau and Whitman) 2009 Performed by the Muscatine Symphony Orchestra, Muscatine, IA

*Neoromantic Concerto for Violin and Orchestra* 2008

*Da Vinci's Musical Riddle* (based on musical notation by Da Vinci) 2006

*Da Vinci's Wings of Flight* (tone poem for large orchestra) 2006

(both Da Vinci works performed by the New Haven Symphony, May 2006).

*We Stand for Freedom: In Memoriam, September 11, 2001*, for orchestra, 2002.  
(5 orchestral performances so far)

*Symphony no. 1, dedicated to the Beauty and Glory of God*. For orchestra, 1999 (final revisions 2002). Performed at Ball State University.

*Concerto for Clarinet and Orchestra* (2003), performed by the Los Angeles Jewish Symphony at the Ford Ampitheater, Los Angeles, CA

*Make Me An Instrument of Your Peace*, a cappella choir setting of St. Francis' prayer (performed at the St. Francis Upper Basilica, Assisi)

Dr. David Stern's CV

Courses taught:

Ear training (beginning to advanced).

Rudiments of theory

Full core harmony sequence from beginning diatonic harmony to advanced  
chromaticism.

20<sup>th</sup> century music

Orchestration

Composition

16<sup>th</sup>-century Counterpoint

18<sup>th</sup>-century Counterpoint

Form and Analysis

Schenkerian Analysis

History of theory (graduate classes)

Music History

Humanities

Graduate seminar on Bach's Use of Tonality and Modality

Graduate seminar on 19<sup>th</sup> Century Compositional Techniques

Graduate Theory Review

Dr. David Stern's CV

University Service:

Serving on school committees.

Administering theory placement exams (Mannes College and Ball State University).

Dissertation and Masters Thesis reading.

Aural Skills Program Coordinator at Ball State University:

- overseeing the graduate assistants teaching the courses
- training them in pedagogical method
- observing their classes and giving teaching critiques
- making their teaching schedules
- scheduling, coordinating and participating in administration of the aural skills final exams.
- revamped the teaching method with greatly improved learning results

Professional Service:

Editorial board of the *Journal of Schenkerian Studies* (from the journal's inception to the present)

Dr. David Stern's CV

Lectures given for:

*Vaughan Williams: 50 Years On Conference* at CUNY Graduate Center,  
Nov. 2008.

Midwest Theory Conference

The first Schenker Conference (at The Mannes College of Music)

The Society for Music Theory

The American Musicological Society

Conference on improvisation at The University of Illinois at Champaign.

Dr. David Stern's CV

*David Stern, Ph.D.*

*Composition • Orchestration • Music Preparation*

**David Stern biography**

Dr. David Stern was born in Brooklyn, NY, on August 6th, 1955. Dr. Stern is a versatile musician with extensive experience in both classical and popular music genres, he likes to say "I grew up with both Bach and the Beatles." He sang classical music in high school choir while playing guitar in rock bands. Initially he played in bands doing the popular music of the time, and then started writing songs for his final high school band. Early formal studies in composition were in a composition class with Stanley Wolfe at Juilliard. Mr. Wolfe was sufficiently impressed by Stern's composing that he encouraged Stern to study composition privately with him.

David Stern holds a Ph.D. in music theory from the Graduate Center of the City University of New York, and has taught music theory at the Mannes College of Music, Queens College, University of North Texas, and Ball State University, Scripps College and Pomona College, as well as composition at Ball State University. He taught a pop harmony course at The California School of Music. Dr. Stern wrote songs in most popular styles (including rock, pop, gospel, folk, and country) for Hilltop Records. He has also worked as a freelance composer, orchestrator and music copyist in Los Angeles, for a while serving as assistant and music librarian to the famous singer, Miss Peggy Lee.

Dr. David Stern's CV

Work there he met Miss Lee's music librarian, Jonathan Barrick Griffiths, who subsequently hired Dr. Stern to be his music copyist for his arrangements of popular songs. Mr. Griffiths is an arranger to the stars (Michael Jackson, Whitney Houston and Barry Manilow have been among his famous clients). Dr. Stern also did music copying for Terry Woodson, whose company handled the music library of Frank Sinatra and other stars.

Dr. Stern temporarily worked for the Los Angeles Philharmonic assisting the music librarians in music preparation. His *Concerto for Clarinet and Orchestra* was premiered at the John Anson Ford Theater, Hollywood, by clarinet soloist Leo Chelyapov and the Los Angeles Jewish Symphony on July 11, 2004. An orchestral work written in response to the tragic attack on New York, "We Stand for Freedom: In Memoriam, September 11<sup>th</sup>, 2001" has already received five performances. Michelle Kinsley of *The Star Press* wrote the following review of the second performance, done by the Muncie Symphony Orchestra:

"...the pieces written by local composers stole this show ... A very impressive piece of music was performed next. We Stand For Freedom, written by Ball State University music faculty member David Stern, was quite simply music that every American needs to hear. The music, Stern said, was written as a response to 9-11. A lot of ground was covered, from the mournful beginning elegy featuring strings to a triumphant empowering section adding the horns and wind instruments, to the powerful, reaffirming ending that featured what appeared to be every member of the orchestra as well as some perfectly placed fire truck bells (played on the triangle)."

Dr. Stern's choral setting of St. Francis' peace prayer has been performed in various locations including the St. Francis Upper Basilica in Assisi. Two orchestral works on Leonardo da Vinci were premiered by the New Haven Symphony in 2006: the tone poem *Da Vinci's Wings of Flight*, which is based on Leonardo's fascination with creating human flight centuries ahead of its time, and *Da Vinci's Musical Riddle*, based on musical

Dr. David Stern's CV

notes from a riddle in one of his notebooks. Dr. Stern's attractive *Lyrical Concerto for Soprano Saxophone and Chamber Orchestra* has been performed a number of times.

Dr. Stern was hired as an expert musical consultant for the copyright infringement case Ernest Lee Straughter et al v. Usher Raymond et al.

Dr. Stern also worked in the Los Angeles music business doing part preparation on projects for high profile clients such as distinguished film composer Fred Karlin and Joey Melotti (when he was Michael Bolton's music director). More recent professional work has been in preparing scores and parts for string arrangements of pop songs by arranger-songwriter Marco Marinangeli for The X Factor TV show and "America's Got Talent." Dr. Stern also assisted Mr. Marinangeli on projects for Walt Disney. Dr. Stern worked successfully in the studio with Rickey Minor (Jay Leno's band leader) and various X Factor rock producers, helping with recording sessions of string arrangements of pop songs to be used on that TV show; when they wanted different musical solutions he suggested changes on the spot which they liked. Dr. Stern wrote songs in popular styles for artist/singer Sholeh Ashtiani, one of these songs, "Song of Blessings" in Celtic/New Age style was extremely well received and has been released on iTunes.

Dr. Stern wrote, recorded and produced a CD Journey Home with songs in popular genres (featuring pop ballads, folk, folk rock, progressive rock and new age styles). It is released on CD Baby and available for download on iTunes and various other musical websites.

Dr. Stern's music in classical, symphonic, popular, and ambient new age styles can be heard at his website:

[www.davidsternmusic.com](http://www.davidsternmusic.com)

## EXHIBIT “B”

EXHIBIT B

**Summary on the Musical Aspects of this Report  
Concerning "Bright Red Chords" and "Domino"  
by Dr. David Stern, Ph.D. in Music Theory**

I was hired by Will Loomis to provide expert analysis of the musical aspect of this case, including examining and providing analysis on the following:

- 1) The melodic correspondence between his song "Bright Red Chords" recorded by his band Loomis and the Lust, and the song "Domino" recorded by Jessie J.
- 2) The relationship between the original demo version of "Bright Red Chords" used for the copyright and the final polished recording for the music video.
- 3) Comparison of the use of drum breaks in both songs at the starts of verses
- 4) The musical relationship between "Bright Red Chords" and the prior song "Rush" by Big Audio Dynamite.

I will give my summary conclusions here, and provide transcripts with detailed discussion and analysis in subsequent exhibits.

**Summary Conclusions**

- 1) Music Correspondences between "Bright Red Chords" and "Domino."

The musical aspect of the case for copyright infringement hangs on the immediately obvious musical similarities between the verses in both songs. On purely musical grounds, most of the verse material in "Domino," bars 4-11, 18-19 and 48-55 corresponds very closely to melodic ideas from the verses of "Bright Red Chords."

There are minor differences between how melodic ideas end in "Bright Red Chords" and "Domino" which constitute slight melodic "variants" rather than being substantial enough to form distinctly different melodies. Any melody can be varied in such a way as to retain its identity, that is common in the "Theme and Variation" genre and in symphonic development. Furthermore, melodic figures from "Domino" that initially had variants appear later in the same or virtually the same form as they originally appear "Bright Red Chords," as I shall show.

Given the broad extent to which the verses of "Domino" use melodic material found in "Bright Red Chords," it is reasonable to conclude on purely musical grounds that the verse melody of "Domino" is largely based on the verse melody of "Bright Red Chords."

- 2) The relationship between the original demo version of "Bright Red Chords" used for the copyright and the final polished recording for the music video.

The issue of the differences between the copyright demo version of "Bright Red Chords" and the final video version having been raised, I was asked to compare these and render my judgment as to the relationship between these two versions and "Domino."

My findings are that although there are differences between the copyright and the final versions of "Bright Red Chords," the melodic materials that are also found in "Domino" are clearly stated in the original version as well, hence are covered by copyright protection. The differences are in areas that are not connected with the musical aspects of this case.

3) Comparison of the use of drum breaks in both songs at the starts of verses

The initial catchy melodic idea is highlighted in both songs by the absence of steady drums in both songs.

4) The musical relationship between "Bright Red Chords" and the prior song "Rush" by Big Audio Dynamite.

The verse melodies to "Rush" and "Bright Red Chords" start very similarly (although not exactly in the same way) and the standard four-melodic line 8-bar verse has important structural features in common (to be discussed below). So one could say that they are structurally the same type melody, but they also differ in detail.

The opening lines of "Bright Red Chords" and "Domino" start with the same notes (when considered in the same key) and rhythms, which are different from the opening line of Rush, and this proves to be a significant factor when assessing the relationship between the three songs. The main melodic verse material of "Domino" is clearly related to material uniquely found in the catchy opening melodic line of "Bright Red Chords" that never appears in that exact form in "Rush," despite clear similarities between these latter two songs.

The use of melodic ideas in these three songs, their similarities and differences are discussed below with transcriptions and detailed analysis.

# EXHIBIT “C”

EXHIBIT C

**Detailed Assessment of the Musical Correspondence between  
Bright Red Chords and Domino  
by Dr. David Stern, Ph.D. in Music Theory**

Having been hired by Will Loomis to provide expert analysis and opinion as to the musical correspondence between his song "Bright Red Chords" recorded by his band Loomis and the Lust, United States Copyright Office with Registration No. Pau003479101 and the song "Domino" recorded by Jessie J., and released on the Universal label and also on her music video. These are my musical findings:

The musical aspect of the case for copyright infringement hangs on the immediately obvious musical correspondences in melodic figures found in the two compared songs. In order to compare the songs, I did musical transcriptions and analysis which are discussed directly below.

**FOR THE FOLLOWING DISCUSSION, PLEASE REFER TO EXHIBIT D**

Exhibit D provides comparative transcriptions of the following:

- 1) The original demo version of "Bright Red Chords," which was filed for the song's copyright. This transcription includes melody and the chords for verse 1, chorus, and verse 2
- 2) The final video version of "Bright Red Chords." This includes melody and chords for the intro, verse 1, chorus, and verse 2 and is presented parallel to the original demo version.
- 3) The video version of "Domino," melody and chords for the intro, verse 1, prechorus, chorus, and verse 2. The song has been transposed from its original G major to D major, the key of "Bright Red Chords," for ease of comparison.

**NOTE: SINCE THE USE OF COMMON MELODIC ELEMENTS IN THE VERSES OF THESE SONGS IS CENTRAL TO THIS REPORT, THE VERSES FOR ALL OF THE THREE SONG VERSIONS ARE LINED UP FOR EASY COMPARISON IN EXAMPLE 1.**

**The Copyright Version of Bright Red Chords and the Final Video Version of Bright Red Chords**

The issue of the differences between the copyright demo version of "Bright Red Chords" and the final video version of "Bright Red Chords" having been raised, I was asked to compare these and render my opinion as to the relationship between these two versions and "Domino." That is why both versions of Bright Red Chords were included in Exhibit D.

[NOTE: The copyright demo version of Bright Red Chords has only one bar of unaccompanied drum intro as opposed to two bars in the final version, which is why the bar numbers between these two versions ended up being off by one throughout.]

While there are differences between the two versions of "Bright Red Chords," I found that they did not in any way substantively alter this report or my opinion, because the relevant melodic elements of this song that also occur in "Domino" are present in both. These melodic elements are found in what I label melodic figure "A" and the ending of what I call melodic figure "B."

#### Correspondence of Ideas in the Verses of Both Songs: Melodic Figure "A"

Please note that in this report I am using pitch names with "Domino" transposed from its original key of G major to D major for easy comparison with "Bright Red Chords."

The main melodic figure labelled "A" in both songs is present fully intact in the demo version of Bright Red Chords (see melodic figures with brackets labelled "A" in Exhibit D):

BRC original: figure A, verse 1 bars 9-10 (Exhibit D p. 2) and 13-14 (Exhibit D p. 3), verse 2 bars 30-31 (Exhibit D p. 11-12), varied in 34-35 (Exhibit D p. 12-13)

BRC final: figure A', verse 1 bars 10-11 (Exhibit D p. 2) and 14-15 (Exhibit D p. 3); verse 2 bars 31-32 (Exhibit D p. 12-13), varied in bars 35-36 (Exhibit D p. 12-13)

Domino: figure A1, verse 1 bars 4-5 (Exhibit D p. 2) and bars 8-9 (Exhibit D p. 3), verse 2 bars 48-49 (Exhibit D p. 11-12) and figure A (virtually same as the original form from BRC) in bars 52-53 (Exhibit D p. 12-13).

Figure A is a catchy and distinctive tune, one can see why it was part of a big hit. The *same notes (when considered by scale step or placed within the same key) and essentially the same rhythms are found in all of the songs for the first bar of the figure*, with slight variants in the second bar of the figure for the final text word. Note: the fact that "Domino" has a quarter note at the fourth beat of bar 4 (Exhibit D p. 2) and bar 8 (Exhibit D p. 3) where the same note appears as two eighth notes in BRC (see Exhibit D, p. 2, bar 11 of BRC final) is too minor a difference to constitute a real change of melodic identity here, such divisions of a larger note value into shorter repeated notes are standard in theme and variations; the text line in Domino has one less syllable and so uses a quarter note rather than two eighth notes.

I use the marking A' for "Bright Red Chords" final version to indicate a very slight variant of figure A – they are the same notes and rhythms as heard in BRC original version, with just slightly different vocal embellishment on the last note – see the brackets with A' markings on the BRC final staff, Exhibit D, p. 2, p. 3, and pp. 11-12.

The marking A1 is used for "Domino" to indicate a more substantial variant: see the brackets with A1 markings above the Domino staff in Exhibit D, p. 2, p. 3, and pp. 11-12. As mentioned in Exhibit B, there are minor differences between how melodic figures end in "Bright Red Chords" and "Domino" which constitute slight melodic "variants" rather than being substantial enough changes to form distinctly different melodies. In all cases with melodic figure A, it is essentially the same melodic figure with slightly different melodic endings on the final word. The kinds of differences we are talking about here are generally more to do with different embellishments of the same melodic figure rather than truly different melodies.

The most distinctive difference in the use of the A melodic figure between the songs is the use of e1-f#1-a1 (notes are transposed for comparison here) at the very end of the "A" idea in "Domino" (see the "Domino" staff, bars 5, 9, and 49 in Exhibit D, on p. 2, p. 3, and p. 12; these are the last three notes of melodic figure A1). This does not occur in "Bright Red Chords," although the f#1 on the downbeat with the last word of the text line is common to both songs, as is some form of vocal embellishment of going down one step and returning to f#1.

However, in bars 52-53 in the second verse of "Domino" the e1-f#1-a1 ending figure is not there, it just ends on f#1 with a vocal embellishment of moving down a step and back to f#1 (see Exhibit D, p. 12-13). This is the same melodic figure with all the most essential rhythms, scale steps and notes as heard in figure A in "Bright Red Chords," the ending embellishment is simply a vocalist's added nuance. Mr. Loomis embellishes similarly in bar 11 (BRC final version, see Exhibit D, p. 2,), going down a half-step to e#1 and back to the f#1, with slightly different rhythm and pitch, but we are talking about vocalists' nuances, nothing of strongly distinguishing nature with regard to melodic identity. The melody of "Domino" in bars 52-53 (Exhibit D, p. 12-13) is the same melodic figure as figure A of "Bright Red Chords."

#### Melodic Correspondence of Ideas in the Verses of Both Songs: role of Phrase "B"

Both songs use a standard grouping of four two-bar melodic figures to form an eight bar unit, which often forms a single verse (although the verses to Domino continue on with additional material).

The verses of "Bright Red Chords" alternate between melodic figure "A" and what I am calling melodic figure B", although "B" is varied in the course of this song. These variations, and the discrepancies between the early copyright version and the final video version have no bearing on the materials common to both this song and to "Domino," for the only part of melodic figure B that carries over into "Domino" is its ending with the melodic motion from the tonic to the sixth and fifth scale degrees. In the final version of "Bright Red Chords," bar 13 (Exhibit D, p. 3) and bar 34 (Exhibit D, p. 12) the last word of the text line has a two-note figure b-a, while these same two notes are also followed by two additional notes in bar 17 (Exhibit D, p. 4) and in bar 38 (Exhibit D, p. 13). These additional notes were not in the original copyright version, which simply has the two

notes b-a at the corresponding points at the ends of verses 1 and 2, the BRC original version bar 16 (Exhibit D, p. 4) and bar 37 (Exhibit D, p. 13).

While the second and fourth text lines for the verses for "Bright Red Chords" have the contrasting melodic figure that I am labeling "B," both verses of "Domino" use figure A for all of its initial four text lines for verses 1 and 2, but its second and fourth text lines have a different ending musically related to the ending of figure B from "Bright Red Chords."

Thus the basic outlines of the two verses of "Bright Red Chords" and the initial 8-bar verse units for verses 1-2 of "Domino" can be represented as follows:

BRC copyright demo: A-B-A-B verse 1, bars 9-16 (see Exhibit D, pp. 2-4), verse 2 in bars 30-37 (B is fragmentary in bars 36-37; see Exhibit D, pp. 11-13).

BRC final: A-B-A-B verse 1, bars 10-17 (see Exhibit D, pp. 2-4), verse 2 in bars 31-38 (see Exhibit D, pp. 11-13).

Domino: A-start of A with ending of B-A-start of A with ending of B, verse 1 bars 4-11, (see Exhibit D, pp. 2-4), verse 2, bars 48-55 (see Exhibit D, pp. 11-13).

The A and B symbols represent material common to both songs, but as my analysis makes clear, there are various embellishments and variants found along the way. However, this representation of the verse structure is useful in that it shows how the material is distributed, and it gives a good overview of the relationship of all of the melodic material of the initial 8-bar verse units of "Domino" to the 8-bar melodic verse material of "Bright Red Chords."

The ending of melodic figure B is varied in "Domino" at bars 7, 11, 51 and 55 (see the "end of B varied" brackets above the "Domino" staff in Exhibit D, p. 3, p. 4, p. 12 and p. 13). However, just as we saw that the ending of melodic figure A was varied and then appeared in essentially the same form as heard in "Bright Red Chords," what I am calling "end of B" also occurs in the same form as heard in "Bright Red Chords;" compare BRC final version's ending of figure B in bars 13 and 34 (Exhibit D, p. 3 and p. 12) and "Domino," bar 19 (see Exhibit D, p. 6); this use of the "start of A with ending of B" occurs after the initial 8-bar verse unit, at the end of the continuation of verse 1.

It is interesting in understanding the connections between the two songs to again note that while both figures A and the ending of B occur initially with variants in "Domino," that both of these elements later appear in that song in essentially the same form (without the variants) as originally found in "Bright Red Chords."

NOTE: In the case of Domino, "melodic figure B" is not used as a whole figure in itself. I am using the labels "end of B varied" and "figure B" in "Domino" to point out the use of material musically related to verse material from melodic figure B of "Bright Red Chords." It is musically very significant that the second and fourth text lines of each

verse ends with the note succession d 1-b-a, with the note "a" arriving on the second eighth note of the bar, that is part of the structural similarity between the two songs (with the 2nd and 4th two-bar melodic groups of both songs both arriving on the fifth scale degree on the second eighth note preceded by the first and sixth scale degrees). This contributes to the similarity in sound between the two songs, especially in the places where "Bright Red Chords" verse lines ends on this note a (see bars 13 and 34 of BRC final version in Exhibit D, p. 3 and p. 12); the effect is not as close between the songs where BRC final version adds two additional notes to the ending of figure B in bars 17 and 38, see Exhibit D, p. 4 and p. 13), but the b-a notes are there in the same locations as the first two eighth notes as they are in bars 13 and 34 of the BRC final version.

Were most of the melodic verse material in "Domino" distinctly different from that of "Bright Red Chords," then these uses of the melodic "end of B" figures in "Domino" by themselves would be insufficient to establish a strong melodic connection between the two songs. However, since melodic figure A is used so extensively in "Domino" and since these figure B endings occur in corresponding places in the verses for both songs, the "end of B" melodic figures in "Domino" strengthen the musical connection between the two songs.

To summarize, all of the material for the first 8-bar units for both verses of "Domino" consists almost entirely of material found in the 8-bar verse units of "Bright Red Chords," with some variant figures or vocal embellishments. The continuation of the first verse of "Domino" contains divergent melodic material starting with the pickup to bar 13 (see Exhibit D, p. 4, starting with "I can taste..."). This verse continuation then returns to the formula "start of A-ending of B" in bars 18-19 (see Exhibit D, p. 5-6), which is another instance of the use of melodic elements found in "Bright Red Chords."

#### **Melodic Correspondence of Ideas in the Verses of Both Songs: Summation**

Exhibit E lines up uses of melodic figures A and B in both early and final versions of "Bright Red Chords" and "Domino" for easy comparison.

Example 2a on p. 1 of Exhibit E shows the use of melodic figure "A" in both songs.

Example 2b on p. 2 of Exhibit E gives melodic figures A and B from "Bright Red Chords" for reference, then shows the use in "Domino" of the "start of A-ending of B" melodic pattern used for the second and fourth text lines in both verses, as well as the additional instance of this pattern at the end of the continuation of verse 1 (bars 18-19, where the "end of B" is used without any substantial variation).

#### **Conclusion on the Use of Figures A and B in Domino**

Given the broad extent to which the verses of "Domino" use melodic material found in "Bright Red Chords," it is reasonable to conclude on purely musical grounds that the verse melody of "Domino" is largely based on the verse melody of "Bright Red Chords." It is my opinion that these similarities form the basis of my conclusion that "Domino" is

substantially similar to both the copyrighted version of "Bright Red Chords" and to the release-version of "Bright Red Chords" on Loomis and the Lusts' video and on their CD release of "Bright Red Chords."